Her diplomatic and translation skills helped Lewis and Clark establish peaceful relations with the American Indians they met along the way, whose assistance was also vital to the expedition. Her bravery saved the expedition's valuable supplies, including the journals that would be used to record the trip, after a boat nearly capsized. Lewis and Clark's appreciation of her skills and resourcefulness led them to grant her a vote on the operation of the expedition that was equal to the other members of the group. In a very real sense, this is the first recorded instance of a woman being allowed to vote in America. I am proud to note that Wyoming, which typifies the landscape of their journey, also recognized the important role of women in overcoming the challenges of the West and was the first state to grant women the right to vote.

I believe that the selection of Sacajawea to be represented on the dollar coin would not only celebrate her valuable contribution to the Lewis and Clark expedition, it would also celebrate the contributions of all American Indians during the expedition. In addition, it would honor all the American Indians of our nation; it would celebrate the greatest terrestrial exploration ever undertaken in U.S. history; and, it would commemorate the turning of our country's hearts and minds from Europe and the East—to the West and our future.

Mr. President, I urge the Treasury Department to continue the process of selecting an image of Sacajawea for the dollar coin. I also urge the Treasury Department to specifically designate and honor Sacajawea as the person on the coin. And finally I encourage my colleagues to oppose any measure that would undermine the placement of Sacajawea on the dollar coin.

Thank you, Mr. President, I yield the floor.

Mr. DEWINE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Ohio.

Mr. DEWINE. Mr. President, I ask unanimous consent to proceed for the next 20 minutes in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NOMINATION OF KIM MCLEAN WARDLAW AND THE NINTH CIRCUIT

Mr. DEWINE. Mr. President, later today, the U.S. Senate will vote on the nomination of Kim McLean Wardlaw to be a judge for the ninth circuit. The Judiciary Committee approved this nomination by a voice vote. At that time, I noted my opposition to this nomination for the record. Today, I expect the Senate will approve this nomination by a voice vote again. Again, Mr. President, I note my opposition for the record.

When we vote on the nomination of a Federal district or circuit court judge, I am sure all of us do so only after deliberation and consideration. I believe that the President of the United States has very broad discretion to nominate whomever he chooses, and I believe the U.S. Senate should give him due deference when he sends us his choice for a Federal judgeship.

Having said that, however, I believe the Senate has a constitutional duty, and it is prescribed in the Constitution, to offer its advice and consent on judicial nominations. Each Senator has his or her own criteria for offering this advice and consent. However, since these nominations are lifetime appointments, all of us must take our advice and consent responsibility very seriously, and rightfully so.

Earlier this year, when the Senate Judiciary Committee considered the nomination of another nominee to be a judge for the ninth circuit, in this case William Fletcher, I expressed my concerns about how far the ninth circuit has moved away from the mainstream of judicial thought and how far it consistently—consistently—strays from Supreme Court precedent.

At that time, considering that nomination to the ninth circuit, I also stated that when the Judiciary Committee considers nominees for the ninth circuit, I feel compelled to apply a higher standard of scrutiny than I do with regard to other circuits.

I have come to this conclusion after an examination of the recent trend of decisions that have been coming out of this ninth circuit. Simply put, I am concerned that the ninth circuit does not follow Supreme Court precedent, and its rulings are simply not in the mainstream. The statistics tell the sad story.

In 1997, the Supreme Court of the United States reversed 27 out of 28 ninth circuit decisions that were appealed and granted cert. That is a 96-percent reversal rate.

In 1996, 10 of 12 decisions for that same circuit were reversed, or 83 percent. If you go back to 1995, 14 of 17 decisions were reversed, or an 82-percent reversal rate.

In other words, what we are seeing from 1995 to the present is an escalating trend of judicial confrontation between the ninth circuit and the U.S. Supreme Court. Let's keep in mind that the Supreme Court only has time to review a small number of ninth circuit decisions. This leaves the ninth circuit, in reality, as the court of last resort for the 45 million Americans who reside within that circuit. In the vast, vast majority of cases, what the ninth circuit says is the final word.

To preserve the integrity of the judicial system for so many people, I believe we need to take a more careful look; I believe this Senate needs to take a more careful work at who we are sending to a circuit that increasingly chooses to disregard precedent and ultimately just plain gets it wrong so much of the time.

Consistent with our constitutional duties, the U.S. Senate has to take responsibility for correcting this disturbing reversal rate of the ninth circuit. That is why I will only support those nominees to the ninth circuit who possess the qualifications and have shown in their background that they have the ability and the inclination to move the circuit back towards that mainstream.

Mr. President, as the statistics reveal, the ninth circuit's reversal rate is an escalating problem. It is not getting better, it is getting worse. So today, this Senator is drawing the line. I am providing notice to my colleagues that this is the last ninth circuit nominee that I will allow to move by voice vote on this floor.

Further, until the ninth circuit starts to follow precedent and produce mainstream decisions, I will continue to hold every ninth circuit nominee to a higher standard to help ensure that the 45 million people who live in the ninth circuit receive justice that is consistent with the rest of the Nation, justice that is predictable, justice that is not arbitrary, nor dependent on the few times the Supreme Court actually reviews and ultimately reverses an erroneous ninth circuit decision.

Mr. President, all this leads me back to this nominee for the ninth circuit, the nominee that we will later today be considering, Judge Kim Wardlaw. There is simply, in my opinion, no evidence that this nominee will help to move the ninth circuit closer to the mainstream. And it is largely for that reason that I rise today to oppose this nomination.

On November 9, 1995, the Judiciary Committee approved Kim Wardlaw's nomination to be U.S. district judge by unanimous consent. Further, the full Senate did the same thing on December 22, 1995. Today, we are now considering her nomination for elevation to the ninth circuit.

Mr. President, during Judge Wardlaw's nomination hearing last June, I asked her to explain or describe the significant cases in which the Women's Lawyers Association of Los Angeles, the WLALA, filed amicus briefs during the time Judge Wardlaw served as president of this organization from 1993 to 1994 and the role she played during that time in the selection of these cases. That was my question.

Judge Wardlaw responded that when she was president there was a ''separate Amicus Briefs Committee that would take requests for writing briefs.'' She described one case she remembered from that year in which the WLALA filed an amicus brief. Our dialogue in the committee then continued as follows. I asked her to ''tell me again—you had this committee. Did you sit on the committee?'' She responded, ''No, I did not.'' Then I asked her, ''Did the president sit on the committee?'' She responded, ''No.''

In written followup questions that I sent to her, I stated—and I quote—''In further reviewing the questionnaire to the Judiciary Committee, I noticed

that you responded you were Amicus Briefs Committee chair (1997–98).'' I then rephrased the question I asked her at the hearing. In her written response, Judge Wardlaw apologized, ''if my response to your question at the hearing was narrower in any way than the scope of your intended question''—she then explained she thought my question and ''ensuing colloquy'' only referred to the years 1993 and 1994 that she was president of the Women's Lawyers Association of Los Angeles, and not to the year she served as the Amicus Briefs cochair from September 1977 to 1988.

Mr. President, I believe her written response was sincere. I do, however, think that she could have been more forthcoming in this response. I believe she could have been more forthcoming in her response during the hearing in order to clarify that she had, in fact, served as one of the chairs of the Amicus Briefs Committee during another point of her entire membership of the WLALA, which by the way, began in 1983.

Mr. President, further, in Judge Wardlaw's 1995 responses to the Judiciary Committee's questionnaire for her nomination to be U.S. district court judge, she noted she was a member of the California Leadership Council for the NOW Legal Defense and Education Fund, California Leadership Council. However, she omitted this information from her 1998 questionnaire.

When recently asked orally to explain this omission, she noted that the NOW Legal Defense and Education Fund's California Leadership Council ''was not an organization''—it ''was not an organization.'' So she said that she should not have even noted her affiliation with the organization in her original district court nomination questionnaire.

Mr. President, I think, again, this, in my view at least, reflects a reluctance to be totally forthcoming with the committee. It is required of a nominee to include all information that is requested in the committee's questionnaire. And it is up to each committee member to weigh the importance, then, of the nominee's responses. Let me make it clear, Mr. President, people can make mistakes on questionnaires. I believe, however, the evidence shows—the totality of the evidence shows she has not been as forthcoming to this committee as, frankly, we should expect.

This nominee has a 12-year affiliation—12-year affiliation—with the Women's Lawyers Association of Los Angeles. She has not only been a member, but has served as an officer. She has served as Amicus Briefs Committee chair and as vice president. She was elected as president of the organization, and served as chair of the Nominations Committee, which selects the officers of the organization.

During the time she served in a leadership capacity, this organization filed amicus briefs in the Supreme Court in cases such as William Webster v. Reproductive Health Services, the case of Rust v. Sullivan, and Planned Parenthood of Southeastern Pennsylvania v. Casey.

I only cite these cases as further examples of her position as a leader of an organization that, in fact, took public stands on issues that were contrary to what the Supreme Court ultimately decided. For me, this serves as evidence that Judge Wardlaw would not help move the circuit more to the mainstream. This is not simply a matter of this nominee being a mere member of an organization that took these positions. Rather, this is a matter of her being a recognized leader of this organization who states, however, that she was not aware of the legal positions taken by this organization.

In response to Senator THURMOND's written questions, Judge Wardlaw stated that ''Once a position was voted upon . . . it was the position of the organization as a whole, not necessarily the view of any individual member.'' That may be, Mr. President, but she did not offer to the Judiciary Committee any details on the role she may or may not have played in the development of these positions.

Judge Wardlaw also stated that she ''would not have publicly opposed a position taken by the organization.'' I believe anyone who voluntarily holds numerous leadership positions in an organization—leadership positions ranging from president to secretary to chair of various committees—I believe that person adopts, helps shape, or at the very least condones the positions taken by that organization.

After all, our committee asked all nominees if they belong to any organization that discriminates on the basis of race, sex or religion; and if so, we ask what the nominee has done to try to change these policies. These are not exactly comparable, but the point simply is, when we ask the questions about membership, we asked it for a reason. It does not mean we hold someone accountable for everything, every position that a committee or organization took that they belong to. No. We weigh the totality of the circumstances, and we try to be fair. But the evidence is overwhelming of her leadership positions.

Frankly, quite candidly, this is not the first nominee who has come before our committee who has been involved with amicus briefs, who has been in an organization that files these briefs, who has held a leadership position, and who then says, ''Oh, no, really, I didn't have anything to do with the formulation of those briefs or the decision about filing them.'' That is a troubling position. And it is a position that we keep hearing from nominee after nominee.

Let me put future nominees on notice that, at least for this U.S. Senator, that type of response is not acceptable.

Mr. President, considering all of these factors, I oppose this nomination. I recognize the reality that this nominee would have been approved if a vote had been taken on the floor. One of the things we learn to do in this business, Mr. President, is to count. And I can count. Therefore, I do not want to put my colleagues, as we begin to leave for the August recess, through the necessity of a rollcall which would slow this process down or inconvenience them. But I felt I had to come to the floor this morning and state my position.

Mr. President, before we consider future ninth circuit nominees, I urge my colleagues to take a close look at the evidence—evidence that shows that we have a judicial circuit that each year moves farther and farther from the mainstream and more and more in a confrontational role with the U.S. Supreme Court and with Supreme Court precedents.

For that reason, Mr. President, I intend in the future to seek rollcall votes on all nominees for the ninth circuit. Until we reverse this disturbing trend, I believe the Senate needs to be on the record as either part of the problem or part of the solution.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

POSTAL EMPLOYEES SAFETY ENHANCEMENT ACT

Mr. ENZI. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 501, S. 2112.

The ACTING PRESIDENT pro tempore. The clerk will report.

The bill clerk read as follows:

A bill (S. 2112) to make Occupational Safety and Health Act of 1970 applicable to the United States Postal Service in the same manner as any other employer.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. ENZI. I ask unanimous consent the bill be considered read the third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be placed at the appropriate place in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (S. 2112) was considered read a third time and passed, as follows:

S. 2112

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Postal Employees Safety Enhancement Act''.

SEC. 2. APPLICATION OF ACT.

(a) DEFINITION.—Section 3(5) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652(5)) is amended by inserting after ''the United States'' the following: ''(not including the United States Postal Service)''.

(b) FEDERAL PROGRAMS.—